respondent did not understand the English language.

In *Seven Seas Supply Co.* v. *Rajoo* [3] it was held that:—

"As the defence of illegality was not pleaded and as all the relevant facts on this issue were not before the court, the court ought not on its initiative to refuse to enforce the contract on the ground of illegality".

It was argued on behalf of the appellant that as P.1's illegality on the ground that the respondent did not understand the English language was not raised in the pleading he had had no opportunity to produce evidence to rebut it with the result that all the relevant facts were not produced before the court and as such the learned president should not have found that the respondent did not understand the English language and thereby to refuse to enforce P.1.

As stated earlier P.1's illegality under section 27 was brought to the notice of the court at an early stage of the hearing and the appellant therefore cannot say that he had had no opportunity to produce whatever evidence that might have been available in rebuttal. Mr. K.L. Devaser (P.W.2) whose signature appears on P.1 gave evidence that he attested P.1. The attestation however was not certified on P.1 as required by section 27(1). The appellant himself said that P.1 was explained to respondent in Malay by his lawyer, P.W.2. Respondent was thoroughly cross-examined as to whether or not he knew the English language and evidence was also adduced that respondent had not only signed P.1 but also his retainer in English and that he could understand figures. All these show that all the relevant and available facts relating to this matter had been brought before the court and the learned president was therefore correct in finding that the respondent did not understand written English and that P.1 was therefore illegal and void.

The respondent not only admitted that he had taken the loan but also said that he had made various payments towards it and it was argued on behalf of the appellant that this subsequent conduct of the respondent should preclude or estop him from relying on the illegality. There is no merit in this argument. In *In re an Arbitration between Mahmoud and Ispahani* [4] at page 729 Scrutton L.J. said:—

"In my view the court is bound, once it knows that the contract is illegal, itself to take the objection and to refuse to enforce the contract . . . . The court does not sit to enforce illegal contracts. There is no question of estoppel; it is for the protection of the public that the court refuses to enforce such a contract".

The other ground of appeal is that section 27 did not apply in this case. It was submitted that P.1 was not given or taken as security but had been executed merely as a note or memorandum required under section 16. I cannot find any substance in this ground of appeal. The claim was for the amount due on the promissory note (P.1) and it is clear from the evidence produced at the hearing that P.1 was intended to be and in fact given and taken as security for the loan.

Section 16(4) reads as follows:—

"Where a promissory note in the English language or in Romanised Malay given by a borrower to a moneylender in respect of a loan contains in the body of the note or by writing thereon all the terms of the contract and is countersigned by the lender or his agent such promissory note shall in itself be sufficient note or memorandum of the contract for the purpose of this section".

In my view all that this section provides is that when a promissory note contains all the terms of the contract required under section 16(3) and is counter-signed by the lender or his agent it shall in itself be a sufficient note or memorandum for the purposes of section 16. A promissory note taken as security, though it may also be a sufficient note or memorandum for the purposes of section 16, as in this case P.1 is, must still comply with the requirement of section 27(1).

I therefore dismiss the appeal with costs.

Appeal dismissed.

Solicitors: *K.L. Devaser & Co.; Norendra & Yap.*

THE MUTUAL LIFE INSURANCE COMPANY OF NEW YORK v. THE SAINT CHRISTOPHER (OWNERS); THE SAINT CHRISTOPHER

[O.C.J. (Tan Ah Tah F.J.) October 24, 1968]

[Singapore — *In rem* Admiralty Suit No. 20 of 1968]

Practice and Procedure — Admiralty — Arrest of ship — Sale by auction — Sheriff's commission — Scale of — R.S.C. 1934, Schedule B, item 115.

Shipping — Warrant of arrest executed against ship — Ship subsequently sold by Sheriff — Whether Sheriff entitled to commission under R.S.C. 1934, Schedule B, item 115 — Analogy — Admiralty Procedure Rules, rr. 5 and 27.

This matter arose out of an action brought by the plaintiffs who claimed to be the mortgagees of the vessel *The Saint Christopher* against the owners of and other persons interested in the said vessel. On the application of the plaintiffs the vessel was arrested by the Sheriff and subsequently sold by public auction. The question arose as to the basis on which the Sheriff's commission in connection with the sale of the vessel should be charged.

Held: the proceedings taken by the Sheriff in the present case are analogous to proceedings when a writ of seizure and sale is executed by the Sheriff within the ordinary jurisdiction of the court and therefore the Sheriff's commission should be charged in accord-

ance with item 115 of Schedule B to the Rules of the Supreme Court, 1934.

[Editorial Note: A notice of appeal was lodged by the plaintiffs against this judgment but it was subsequently withdrawn.]

Cases referred to:—

(1) *The Constellation* [1965] 2 Ll. Rep. 538; [1965] 3 All E.R. 873; [1966] 1 W.L.R. 272.

(2) *The Zafiro* [1960] P. 1.

(3) *Sturm* v. *Ulrich* (1925), 10 Federal Reporter 2nd Series 9.

ADMIRALTY SUIT.

Altogether four writs *in rem* were issued, namely *In rem* Admiralty Suits Nos. 20, 21, 22 and 23 of 1968, and four vessels, the "Saint Christopher", "Saint Lawrence", "Sea Pioneer" and "Ocean Pioneer" were arrested in February 1968. All four vessels were sold by public auction on May 3, 1968 for a total price of $22,100,000. The plaintiffs, The Mutual Life Insurance Company of New York, who were mortgagees of the four vessels applied by way of motion for the determination of the question on what basis the Sheriff's commission in connection with the sale of those vessels was to be charged. The total amount of commission involved was $552,590. Counsel for the plaintiffs contended that the commission payable to the Sheriff should be on the scale payable in England which is lower than that prescribed by item 115 of Schedule B to the Rules of the Supreme Court, 1934. The judgment in Admiralty Suit No. 20 of 1968 was expected as binding on the parties in the other three suits.

T.H.A. Potts for the plaintiffs.

Ho Thian Cheh (Sr. State Counsel) for the Sheriff of the High Court.

Cur. Adv. Vult.

Tan Ah Tah F.J.: The plaintiffs, who claim to be the mortgagees of the vessel "Saint Christopher," commenced these proceedings on the 14th February 1968 against the owners of and other persons interested in the said vessel. At the instance of the plaintiffs, a warrant of arrest was issued on the same day commanding the Sheriff to arrest the said vessel. By virtue of the warrant of arrest the said vessel was duly arrested on the same day.

By an order made on the 1st March 1968 it was ordered that the said vessel be appraised and sold by the Sheriff by public auction. The said vessel was duly sold by public auction on the 3rd May 1968. It should be noted that at the time of the sale, judgment had not yet been entered for the plaintiffs on their claim. Owing to the intervention of interested parties, it was not until the 5th July 1968 that judgment was entered in favour of the plaintiffs, all questions of priorities between the interested parties being reserved.

The plaintiffs have applied by way of motion for the determination of the question on what basis the Sheriff's commission in connection with the sale of the said vessel is to be charged.

At this stage it is convenient to refer to rule 27(1) of the Admiralty Procedure Rules which reads as follows:—

"27. (1) For all proceedings in connection with admiralty suits the same fees shall be payable as are payable for the same or analogous proceedings in cases within the ordinary jurisdiction of the court in conformity with the fees and percentages in Schedule B to the Rules of the Supreme Court, 1934."

Item 115 of Schedule B to the Rules of the Supreme Court, 1934, so far as it is relevant to the present case, is in the following terms:—

"Commission of 5 per cent to be charged on the first $1,000 and 2½ per cent upon all above that sum when levied by seizure and sale, such sum to include auctioner's commission."

Counsel for the plaintiffs has contended that the proceedings in the present case are neither the same nor analogous to proceedings when a writ of seizure and sale is executed by the Sheriff within the ordinary jurisdiction of the court. He has said that in the vast majority of admiralty suits the arrest of the vessel is effective in producing the security which the plaintiffs ask for in case they are successful. He has laid stress on the fact that the form of procedure whereby a vessel is arrested is designed to provide the security, this procedure being appropriate in admiralty suits because of the difference in mobility between ships and property situated on land. He has pointed out that if security is furnished and the vessel is released, the Sheriff is not entitled to remuneration on a percentage basis. He has accordingly submitted that the commission payable to the Sheriff should be charged on the scale applicable in England, that scale being lower than that prescribed by item 115 of Schedule B to the Rules of the Supreme Court, 1934.

On the other hand, counsel for the Sheriff has contended that there is a broad spectrum of similarity in both types of proceedings. He has pointed out that the actual steps taken to arrest a vessel and to levy execution under a writ of seizure and sale are very similar, that at the very least the Sheriff has custody of the vessel which has been arrested or the goods or property which have been seized or attached, and that in both types of proceedings the powers and duties of the Sheriff are the same. In this connection he has referred to rule 5 of the Admiralty Procedure Rules which reads as follows:—

"5. The Registrar, Deputy Registrar, Sheriff, and other officers of the court shall have with respect to all matters connected with the jurisdiction conferred

on the court by the Act the same powers and duties as they have in respect of matters connected with the civil jurisdiction of the court."

In the course of the argument the following passage from the judgment of Hewson J. in *The Constellation* [1] at p. 543 was referred to:—

"Arrest and sale in Admiralty are, in my view, equivalent to sequestration and execution respectively and are incidents in proceedings *in rem*. 'Proceedings' includes executions and I take that from the authority of Sir George Jessel M.R., in *In re Artistic Colour Printing Company* (1880), 14 Ch. D. 502. at p. 505"

Counsel for the plaintiffs has pointed out that this passage is an *obiter dictum*. He has said further that *The Zafiro*,[2] in which it was held that the arrest of a vessel was not an execution within the meaning of section 325 of the Companies Act, 1948, was not cited to the judge who heard the case of *The Constellation*, *supra*. On this point, it is to be observed that it was the same judge, namely Hewson J., who heard both *The Zafiro*, *supra*, and *The Constellation*, *supra*. What is even more important is the fact that in both those cases Hewson J. was considering the precise meaning of certain words and phrases used in the Companies Act, 1948. For example, in *The Zafiro*, *supra*, Hewson J. had to decide whether the meaning of the word "execution" could be extended to include a writ *in rem* in the circumstances that he had to consider in that case. The question which I have to decide is an entirely different one, the question being whether the two types of proceedings under consideration are similar or analogous. In my view they are not similar. It therefore remains for me to decide whether they are analogous.

An analogy may be defined as a partial similarity between two things or proceedings on which a comparison may be based. The word "analogous" therefore has the meaning of corresponding in some particular or particulars.

Counsel for the plaintiffs has pointed out the differences between the two types of proceedings. In this connection I would refer to the following extract from the headnote in the American case of *Sturm* v. *Ulrich* [3]:—

"'Analogy' does not mean identity, but implies a difference."

In my opinion, there are a number of similarities in the two types of proceedings and I have therefore reached the conclusion that they are analogous. The fact that the object of a plaintiff in effecting the arrest of a vessel is usually to obtain security does not, in my view, prevent the two types of proceedings — which involve an actual sale — from being analogous. No doubt if sufficient security is furnished, a vessel which has been arrested will be released. This was one of the points made by counsel for the plaintiffs. What is being considered, however, is the type of proceedings in which a vessel which has been arrested under a warrant of arrest is actually sold by the Sheriff. In my opinion, this type of proceedings is analogous to the proceeding in which goods seized by the Sheriff under a writ of seizure and sale are sold by him.

It follows therefore that in my judgment the Sheriff's commission in this case should be charged in accordance with item 115 of Schedule B to the Rules of the Supreme Court, 1934. The Sheriff's costs of this motion are to be taxed on the higher scale and paid out of the proceeds of sale.

Order accordingly.

Solicitors: *Rodyk & Davidson.*

LIM AH CHI v. TAN AH MUI & ANOR.

[F.C. (Wee Chong Jin C.J., Tan Ah Tah F.J. & Winslow J.) November 19, 1968]

[Singapore—Federal Court Civil Appeal No. Y15 of 1968]

Damages — Fatal accident — Self employed "pow" seller — Loss of pecuniary benefits to dependants — — Possibility of widow's re-marriage — Evidence of deceased's earnings — Court using its own understanding of conditions prevailing in regard to one-man business.

The deceased aged 28, was a self-employed "pow" seller. He died in a motor accident as a consequence of the negligence of the appellant. His dependants were a widow, aged 23, three children aged 5, 4 and 1 and parents. In the court below a sum of $29,904 damages was awarded. The appellant contended that this award was manifestly excessive having regard to the evidence adduced on the respondents' behalf with regard to the earnings of the deceased.

The Federal Court agreed with the learned trial judge that as the deceased was only 28 years old when he died, a computation based on a purchase of 20 years was reasonable even if one took into account the possibility of the widow's re-marriage. However owing to the paucity of credible evidence as to the deceased's actual earnings from his business as a "pow" seller, the court used its own understanding of conditions prevailing in Singapore in regard to one-man business of this particular kind to arrive at a reasonable figure which did not conflict with the evidence adduced, and allowing the appeal,

Held: the loss of pecuniary benefits to the dependants ought to have been assessed at the sum of $140 per month which, on a purchase for 20 years, work out at approximately $20,932.

FEDERAL COURT.

Ng Kian Fong for the appellant.

D.G. Ironside for the respondents.

Cur. Adv. Vult.

Winslow J. (delivering the judgment of the court): This is an appeal against that part of the decision of Choor Singh J. given on 3rd